



# House of Representatives

General Assembly

**File No. 273**

February Session, 2010

Substitute House Bill No. 5270

*House of Representatives, April 1, 2010*

The Committee on Banks reported through REP. BARRY of the 12th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING FORECLOSURE MEDIATION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. Section 49-31l of the 2010 supplement to the general  
2       statutes is repealed and the following is substituted in lieu thereof  
3       (*Effective from passage*):

4       (a) Prior to July 1, 2010: (1) Any action for the foreclosure of a  
5       mortgage on residential real property with a return date during the  
6       period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to  
7       the provisions of subsection (b) of this section, and (2) any action for  
8       the foreclosure of a mortgage on residential real property with a return  
9       date during the period from July 1, 2009, to June 30, [2010] 2011,  
10      inclusive, shall be subject to the provisions of subsection (c) of this  
11      section.

12      (b) (1) Prior to July 1, 2010, when a mortgagee commences an action  
13      for the foreclosure of a mortgage on residential real property with a  
14      return date during the period from July 1, 2008, to June 30, 2009,

15 inclusive, the mortgagee shall give notice to the mortgagor of the  
16 foreclosure mediation program established in section 49-31m by  
17 attaching to the front of the foreclosure complaint that is served on the  
18 mortgagor: (A) A copy of the notice of the availability of foreclosure  
19 mediation, in such form as the Chief Court Administrator prescribes,  
20 and (B) a foreclosure mediation request form, in such form as the Chief  
21 Court Administrator prescribes.

22 (2) Except as provided in subdivision (3) of this subsection, a  
23 mortgagor may request foreclosure mediation by submitting the  
24 foreclosure mediation request form to the court and filing an  
25 appearance not more than fifteen days after the return day for the  
26 foreclosure action. Upon receipt of the foreclosure mediation request  
27 form, the court shall notify each appearing party that a foreclosure  
28 mediation request form has been submitted by the mortgagor.

29 (3) The court may grant a mortgagor permission to submit a  
30 foreclosure mediation request form and file an appearance after the  
31 fifteen-day period established in subdivision (2) of this subsection, for  
32 good cause shown, except that no foreclosure mediation request form  
33 may be submitted and no appearance may be filed more than twenty-  
34 five days after the return date.

35 (4) No foreclosure mediation request form may be submitted to the  
36 court on or after July 1, [2010] 2011.

37 (5) If at any time on or after July 1, 2008, but prior to July 1, [2010]  
38 2011, the court determines that the notice requirement of subdivision  
39 (1) of this subsection has not been met, the court may, upon its own  
40 motion or upon the written motion of the mortgagor, issue an order  
41 that no judgment may enter for fifteen days during which period the  
42 mortgagor may submit a foreclosure mediation request form to the  
43 court.

44 (6) Notwithstanding any provision of the general statutes or any  
45 rule of law to the contrary, prior to July 1, [2010] 2011, no judgment of  
46 strict foreclosure nor any judgment ordering a foreclosure sale shall be

47 entered in any action subject to the provisions of this subsection and  
48 instituted by the mortgagee to foreclose a mortgage on residential real  
49 property unless: (A) Notice to the mortgagor has been given by the  
50 mortgagee in accordance with subdivision (1) of this subsection and  
51 the time for submitting a foreclosure mediation request form has  
52 expired and no foreclosure mediation request form has been  
53 submitted, or if such notice has not been given, the time for submitting  
54 a foreclosure mediation request form pursuant to subdivision (2) or (3)  
55 of this subsection has expired and no foreclosure mediation request  
56 form has been submitted, or (B) the mediation period set forth in  
57 subdivision (b) of section 49-31n, as amended by this act, has expired  
58 or has otherwise terminated, whichever is earlier.

59 (7) None of the mortgagor's or mortgagee's rights in the foreclosure  
60 action shall be waived by the mortgagor's submission of a foreclosure  
61 mediation request form to the court.

62 (c) (1) Prior to July 1, [2010] 2011, when a mortgagee commences an  
63 action for the foreclosure of a mortgage on residential real property  
64 with a return date on or after July 1, 2009, the mortgagee shall give  
65 notice to the mortgagor of the foreclosure mediation program  
66 established in section 49-31m by attaching to the front of the writ,  
67 summons and complaint that is served on the mortgagor: (A) A copy  
68 of the notice of foreclosure mediation, in such form as the Chief Court  
69 Administrator prescribes, (B) a copy of the foreclosure mediation  
70 certificate form described in subdivision (3) of this subsection, in such  
71 form as the Chief Court Administrator prescribes, and (C) a blank  
72 appearance form, in such form as the Chief Court Administrator  
73 prescribes.

74 (2) The court shall issue a notice of foreclosure mediation described  
75 in subdivision (3) of this subsection to the mortgagor not later than the  
76 date three business days after the date the mortgagee returns the writ  
77 to the court.

78 (3) The notice of foreclosure mediation shall instruct the mortgagor  
79 to file the appearance and foreclosure mediation certificate forms with

80 the court no later than the date fifteen days from the return date for the  
81 foreclosure action. The foreclosure mediation certificate form shall  
82 require the mortgagor to provide sufficient information to permit the  
83 court to confirm that the defendant in the foreclosure action is a  
84 mortgagor, and to certify that said mortgagor has sent a copy of the  
85 mediation certificate form to the plaintiff in the action.

86 (4) Upon receipt of the mortgagor's appearance and foreclosure  
87 mediation certificate forms, and provided the court confirms the  
88 defendant in the foreclosure action is a mortgagor and that said  
89 mortgagor has sent a copy of the mediation certificate form to the  
90 plaintiff, the court shall schedule a date for foreclosure mediation in  
91 accordance with subsection (c) of section 49-31n, as amended by this  
92 act. The court shall issue notice of such mediation date to all appearing  
93 parties not earlier than the date five business days after the return date  
94 or by the date three business days after the date on which the court  
95 receives the mortgagor's appearance and foreclosure mediation forms,  
96 whichever is later, except that if the court does not receive the  
97 appearance and foreclosure mediation certificate forms from the  
98 mortgagor by the date fifteen days after the return date for the  
99 foreclosure action, the court shall not schedule such mediation.

100 (5) Notwithstanding the provisions of this subsection, the court may  
101 refer a foreclosure action brought by a mortgagee to the foreclosure  
102 mediation program at any time, provided the mortgagor has filed an  
103 appearance in said action and further provided the court shall, not  
104 later than the date three business days after the date on which it makes  
105 such referral, send a notice to each appearing party scheduling the first  
106 foreclosure mediation session for a date not later than the date fifteen  
107 business days from the date of such referral.

108 (6) Notwithstanding any provision of the general statutes or any  
109 rule of law, prior to July 1, [2010] 2011, no judgment of strict  
110 foreclosure nor any judgment ordering a foreclosure sale shall be  
111 entered in any action subject to the provisions of this subsection and  
112 instituted by the mortgagee to foreclose a mortgage on residential real

113 property unless: (A) The mediation period set forth in [subdivision]  
114 subsection (c) of section 49-31n, as amended by this act, has expired or  
115 has otherwise terminated, whichever is earlier, or (B) the mediation  
116 program is not otherwise required or available.

117 (7) None of the mortgagor's or mortgagee's rights in the foreclosure  
118 action shall be waived by participation in the foreclosure mediation  
119 program.

120 Sec. 2. Section 49-31n of the 2010 supplement to the general statutes  
121 is repealed and the following is substituted in lieu thereof (*Effective*  
122 *from passage*):

123 (a) Prior to July 1, 2010: (1) Any action for the foreclosure of a  
124 mortgage on residential real property with a return date during the  
125 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to  
126 the provisions of subsection (b) of this section, and (2) any action for  
127 the foreclosure of a mortgage on residential real property with a return  
128 date during the period from July 1, 2009, to June 30, [2010] 2011,  
129 inclusive, shall be subject to the provisions of subsection (c) of this  
130 section.

131 (b) (1) For any action for the foreclosure of a mortgage on residential  
132 real property with a return date during the period from July 1, 2008, to  
133 June 30, 2009, inclusive, the mediation period under the foreclosure  
134 mediation program established in section 49-31m shall commence  
135 when the court sends notice to each appearing party that a foreclosure  
136 mediation request form has been submitted by a mortgagor to the  
137 court, which notice shall be sent not later than three business days after  
138 the court receives a completed foreclosure mediation request form. The  
139 mediation period shall conclude not more than sixty days after the  
140 return day for the foreclosure action, except that the court may, in its  
141 discretion, for good cause shown, (A) extend, by not more than thirty  
142 days, or shorten the mediation period on its own motion or upon  
143 motion of any party, or (B) extend by not more than thirty days the  
144 mediation period upon written request of the mediator.

145 (2) The first mediation session shall be held not later than fifteen  
146 business days after the court sends notice to all parties that a  
147 foreclosure mediation request form has been submitted to the court. If  
148 any party is not ready to mediate, such party shall file a motion for  
149 continuance or a motion for extension of the mediation period, or both,  
150 with the foreclosure caseflow coordinator. In the event the mortgagee  
151 is not ready to mediate, the court shall not award attorney's fees to the  
152 mortgagee for the scheduled mediation session. For each mediation  
153 session: (A) The mortgagor and mortgagee shall appear in person at  
154 each mediation session and shall have authority to agree to a proposed  
155 settlement, except that if the mortgagee is represented by counsel, the  
156 mortgagee's counsel may appear in lieu of the mortgagee to represent  
157 the mortgagee's interests at the mediation, provided such counsel has  
158 the authority to agree to a proposed settlement and the mortgagee is  
159 available [during] to participate in the mediation session by telephone,  
160 [or electronic means.] The mortgagee or the mortgagee's counsel shall  
161 bring to the mediation session (i) a certified copy of the original note  
162 and mortgage, (ii) documentation of each negotiation and assignment  
163 of such note and mortgage, (iii) a record of payment on the mortgage  
164 loan, (iv) a complete itemization of all fees and costs, including  
165 attorney's fees and any other charges, that must be paid in order to  
166 reinstate the mortgage or satisfy the full obligations of the mortgage  
167 loan, (v) an itemization of any overdue payments causing the  
168 mortgage loan to be in default status, (vi) any agreement with an  
169 investor or other party that affects mediation, including, but not  
170 limited to, a pooling and servicing agreement, and (vii) any other  
171 documentation required by the court. The mortgagee or the  
172 mortgagee's counsel shall provide the mortgagor with the address,  
173 telephone number and any other contact information for any person  
174 who has authority to agree to a proposed settlement of the foreclosure  
175 action, including, but not limited to, the mortgagee, the mortgagee's  
176 agent and the mortgage servicer. The mortgagee, the mortgagee's  
177 counsel or the mortgagee's agent shall verify the receipt of any  
178 information requested from the mortgagor. The court shall not award  
179 attorney's fees to any mortgagee for time spent in a mediation session

180 if the court finds that such mortgagee has failed to comply with this  
181 subdivision, unless the court finds reasonable cause for such failure.  
182 (B) Each party shall make a good-faith effort to mediate all issues  
183 arising out of the foreclosure action. A good-faith effort includes, but is  
184 not limited to, (i) procuring documents evidencing compliance with  
185 governmental loan modification programs, (ii) providing written  
186 reasons for denials of any loan modification applications, (iii)  
187 disclosing the inputs for any formulas used to determine whether to  
188 modify the mortgage loan, (iv) documenting any restrictions that  
189 prevent modification of the mortgage loan, and (v) demonstrating  
190 reasonable efforts on the part of the mortgagee or the mortgagee's  
191 agent to obtain a waiver of such restrictions. If any party or attorney  
192 for such party fails to attend a mediation session or to make a good-  
193 faith effort to mediate, the court may sanction such party or such  
194 party's attorney unless the court finds reasonable cause for such failure  
195 to attend or to make a good-faith effort. Sanctions shall include, but  
196 not be limited to, dismissing the foreclosure action, tolling interest  
197 accrual on the mortgage loan, and forbidding the mortgagee from  
198 charging the mortgagor for the mortgagee's attorney's fees.

199 (3) Not later than two days after the conclusion of the first  
200 mediation session, the mediator shall determine whether the parties  
201 will benefit from further mediation. The mediator shall file with the  
202 court a report setting forth such determination and mail a copy of such  
203 report to each appearing party. If the mediator reports to the court that  
204 the parties will not benefit from further mediation, the mediation  
205 period shall terminate automatically. If the mediator reports to the  
206 court after the first mediation session that the parties may benefit from  
207 further mediation, the mediation period shall continue.

208 (4) If the mediator has submitted a report to the court that the  
209 parties may benefit from further mediation pursuant to subdivision (3)  
210 of this subsection, not more than two days after the conclusion of the  
211 mediation, but no later than the termination of the mediation period  
212 set forth in subdivision (1) of this subsection, the mediator shall file a  
213 report with the court describing the proceedings and specifying the

214 issues resolved, if any, and any issues not resolved pursuant to the  
215 mediation. The filing of the report shall terminate the mediation period  
216 automatically. If certain issues have not been resolved pursuant to the  
217 mediation, the mediator may refer the mortgagor to any appropriate  
218 community-based services that are available in the judicial district, but  
219 any such referral shall not cause a delay in the mediation process.

220 (5) The Chief Court Administrator shall establish policies and  
221 procedures to implement this subsection. Such policies and procedures  
222 shall, at a minimum, provide that the mediator shall advise the  
223 mortgagor at the first mediation session required by subdivision (2) of  
224 this subsection that: (A) Such mediation does not suspend the  
225 mortgagor's obligation to respond to the foreclosure action; and (B) a  
226 judgment of strict foreclosure or foreclosure by sale may cause the  
227 mortgagor to lose the residential real property to foreclosure.

228 (6) In no event shall any determination issued by a mediator under  
229 this program form the basis of an appeal of any foreclosure judgment.

230 (7) Foreclosure mediation request forms shall not be accepted by the  
231 court on or after July 1, [2010] 2011, and the foreclosure mediation  
232 program shall terminate when all mediation has concluded with  
233 respect to any applications submitted to the court prior to July 1, [2010]  
234 2011.

235 (8) At any time during the mediation period, the mediator may refer  
236 the mortgagor to the mortgage assistance programs, except that any  
237 such referral shall not prevent a mortgagee from proceeding to  
238 judgment when the conditions specified in subdivision (6) of  
239 subsection (b) of section 49-31l, as amended by this act, have been  
240 satisfied.

241 (9) Any foreclosure action that has been reported as settled shall be  
242 withdrawn not later than one hundred twenty days following the  
243 settlement date. If a settled foreclosure action is not withdrawn in  
244 accordance with the provision of this subdivision, the action shall be  
245 dismissed unless the court, upon a showing of good cause, extends the



246 time for withdrawal.

247 (c) (1) For any action for the foreclosure of a mortgage on residential  
248 real property with a return date during the period from July 1, 2009, to  
249 June 30, [2010] 2011, inclusive, the mediation period under the  
250 foreclosure mediation program established in section 49-31m shall  
251 commence when the court sends notice to each appearing party  
252 scheduling the first foreclosure mediation session. The mediation  
253 period shall conclude not later than the date sixty days after the return  
254 date for the foreclosure action, except that the court may, in its  
255 discretion, for good cause shown, (A) extend, by not more than thirty  
256 days, or shorten the mediation period on its own motion or upon  
257 motion of any party, or (B) extend by not more than thirty days the  
258 mediation period upon written request of the mediator.

259 (2) The first mediation session shall be held not later than fifteen  
260 business days after the court sends notice to each appearing party in  
261 accordance with subdivision (4) of subsection (c) of section 49-31l, as  
262 amended by this act. If any party is not ready to mediate, such party  
263 shall file a motion for continuance or a motion for extension of the  
264 mediation period, or both, with the foreclosure caseflow coordinator.  
265 In the event the mortgagee is not ready to mediate, the court shall not  
266 award attorney's fees to the mortgagee for the scheduled mediation  
267 session. For each mediation session: (A) The mortgagor and mortgagee  
268 shall appear in person at each mediation session and shall have  
269 authority to agree to a proposed settlement, except that if the  
270 mortgagee is represented by counsel, the mortgagee's counsel may  
271 appear in lieu of the mortgagee to represent the mortgagee's interests  
272 at the mediation, provided such counsel has the authority to agree to a  
273 proposed settlement and the mortgagee is available [during] to  
274 participate in the mediation session by telephone. [or electronic  
275 means.] The mortgagee or the mortgagee's counsel shall bring to the  
276 mediation session (i) a certified copy of the original note and  
277 mortgage, (ii) documentation of each negotiation and assignment of  
278 such note and mortgage, (iii) a record of payment on the mortgage  
279 loan, (iv) a complete itemization of all fees and costs, including

280 attorney's fees and any other charges, that must be paid in order to  
281 reinstate the mortgage or satisfy the full obligations of the mortgage  
282 loan, (v) an itemization of any overdue payments causing the  
283 mortgage loan to be in default status, (vi) any agreement with an  
284 investor or other party that affects mediation, including, but not  
285 limited to, a pooling and servicing agreement, and (vii) any other  
286 documentation required by the court. The mortgagee or the  
287 mortgagee's counsel shall provide the mortgagor with the address,  
288 telephone number and any other contact information for any person  
289 who has authority to agree to a proposed settlement of the foreclosure  
290 action, including, but not limited to, the mortgagee, the mortgagee's  
291 agent and the mortgage servicer. The mortgagee, the mortgagee's  
292 counsel or the mortgagee's agent shall verify the receipt of any  
293 information requested from the mortgagor. The court shall not award  
294 attorney's fees to any mortgagee for time spent in a mediation session  
295 if the court finds that such mortgagee has failed to comply with this  
296 subdivision, unless the court finds reasonable cause for such failure.  
297 (B) Each party shall make a good-faith effort to mediate all issues  
298 arising out of the foreclosure action. A good-faith effort includes, but is  
299 not limited to, (i) procuring documents evidencing compliance with  
300 governmental loan modification programs, (ii) providing written  
301 reasons for denials of any loan modification applications, (iii)  
302 disclosing the inputs for any formulas used to determine whether to  
303 modify the mortgage loan, (iv) documenting any restrictions that  
304 prevent modification of the mortgage loan, and (v) demonstrating  
305 reasonable efforts on the part of the mortgagee or the mortgagee's  
306 agent to obtain a waiver of such restrictions. If any party or attorney  
307 for such party fails to attend a mediation session or to make a good-  
308 faith effort to mediate, the court may sanction such party or such  
309 party's attorney unless the court finds reasonable cause for such failure  
310 to attend or to make a good-faith effort. Sanctions shall include, but  
311 not be limited to, dismissing the foreclosure action, tolling interest  
312 accrual on the mortgage loan, and forbidding the mortgagee from  
313 charging the mortgagor for the mortgagee's attorney's fees.

314 (3) Not later than two days after the conclusion of the first

315 mediation session, the mediator shall determine whether the parties  
316 will benefit from further mediation. The mediator shall file with the  
317 court a report setting forth such determination and mail a copy of such  
318 report to each appearing party. If the mediator reports to the court that  
319 the parties will not benefit from further mediation, the mediation  
320 period shall terminate automatically. If the mediator reports to the  
321 court after the first mediation session that the parties may benefit from  
322 further mediation, the mediation period shall continue.

323 (4) If the mediator has submitted a report to the court that the  
324 parties may benefit from further mediation pursuant to subdivision (3)  
325 of this subsection, not more than two days after the conclusion of the  
326 mediation, but no later than the termination of the mediation period  
327 set forth in subdivision (1) of this subsection, the mediator shall file a  
328 report with the court describing the proceedings and specifying the  
329 issues resolved, if any, and any issues not resolved pursuant to the  
330 mediation. The filing of the report shall terminate the mediation period  
331 automatically. If certain issues have not been resolved pursuant to the  
332 mediation, the mediator may refer the mortgagor to any appropriate  
333 community-based services that are available in the judicial district, but  
334 any such referral shall not cause a delay in the mediation process.

335 (5) The Chief Court Administrator shall establish policies and  
336 procedures to implement this subsection. Such policies and procedures  
337 shall, at a minimum, provide that the mediator shall advise the  
338 mortgagor at the first mediation session required by subdivision (2) of  
339 this subsection that: (A) Such mediation does not suspend the  
340 mortgagor's obligation to respond to the foreclosure action; and (B) a  
341 judgment of strict foreclosure or foreclosure by sale may cause the  
342 mortgagor to lose the residential real property to foreclosure.

343 (6) In no event shall any determination issued by a mediator under  
344 this program form the basis of an appeal of any foreclosure judgment.

345 (7) The foreclosure mediation program shall terminate when all  
346 mediation has concluded with respect to any foreclosure action with a  
347 return date during the period from July 1, 2009, to June 30, [2010] 2011,

348 inclusive.

349 (8) At any time during the mediation period, the mediator may refer  
350 the mortgagor to the mortgage assistance programs, except that any  
351 such referral shall not prevent a mortgagee from proceeding to  
352 judgment when the conditions specified in subdivision (6) of  
353 subsection (c) of section 49-31l, as amended by this act, have been  
354 satisfied.

355 (9) Any foreclosure action that has been reported as settled shall be  
356 withdrawn not later than one hundred twenty days following the  
357 settlement date. If a settled foreclosure action is not withdrawn in  
358 accordance with the provision of this subdivision, the action shall be  
359 dismissed unless the court, upon a showing of good cause, extends the  
360 time for withdrawal.

361 Sec. 3. Section 47a-20e of the general statutes is repealed and the  
362 following is substituted in lieu thereof (*Effective October 1, 2010*):

363 (a) For purposes of this section:

364 (1) "Bona fide tenant" means a tenant who (A) is not the mortgagor  
365 or [owner of the property] the child, spouse or parent of the  
366 mortgagor, and (B) entered into the rental agreement in an arms-length  
367 transaction; and

368 (2) "Premises", "rental agreement" and "tenant" have the same  
369 meanings as provided in section 47a-1.

370 (b) Whenever a mortgage or lien of residential real property has  
371 been foreclosed and there is a bona fide tenant in possession on the  
372 date absolute title to the property vests in the mortgagee, lienholder or  
373 other successor in interest, such interest shall be assumed subject to the  
374 rights of any bona fide tenant in accordance with the provisions of this  
375 subsection, and any execution of ejectment issued pursuant to section  
376 49-22 against such tenant shall be stayed and no summary process  
377 action pursuant to chapter 832 or other action to dispossess such tenant  
378 shall be commenced until the later of (1) [in the case of a written rental

379 agreement entered into more than sixty days before the  
380 commencement of the foreclosure action,] the expiration date  
381 contained in [such] any rental agreement entered into before the date  
382 absolute title vests in the mortgagee, lienholder or other successor in  
383 interest, or (2) [sixty] ninety days after the date absolute title vests in  
384 the mortgagee, lienholder or other successor in interest. [, whichever  
385 occurs first, or (2) in the case of a rental agreement other than one  
386 described in subdivision (1) of this subsection, thirty days after the  
387 date absolute title vests in the mortgagee, lienholder or successor in  
388 interest, except that] The mortgagee, lienholder or other successor in  
389 interest shall provide a notice to vacate to any such tenant at least  
390 ninety days prior to the effective date of such notice. Notwithstanding  
391 the provisions of this section, a summary process action or other action  
392 to dispossess such tenant may be commenced prior to such date for a  
393 reason set forth in section 47a-23 or 47a-31 other than for the reason  
394 that the tenant's rental agreement has terminated by lapse of time or  
395 that the tenant no longer has the right or privilege to occupy the  
396 premises as a result of such judgment of foreclosure. Nothing in this  
397 section shall reduce the rights of tenants otherwise protected against  
398 dispossession by sections 21-80 and 47a-23c or any other provision of  
399 law.

400 Sec. 4. Section 47a-20f of the general statutes is repealed and the  
401 following is substituted in lieu thereof (*Effective October 1, 2010*):

402 Upon the foreclosure of a mortgage or lien of residential real  
403 property, any money or other valuable consideration offered by a  
404 mortgagee, lienholder or other successor in interest to a tenant in  
405 possession as an incentive to vacate the premises shall [(1) if there is  
406 evidence of the amount or value of the security deposit paid by the  
407 tenant,] be at least equal in amount or value to the greater of (1) the  
408 security deposit and interest that would be due such tenant pursuant  
409 to chapter 831 upon the termination of the tenancy [and be in addition  
410 to] plus any such security deposit and interest, [or] (2) [if there is no  
411 evidence of the amount or value of the security deposit paid by the  
412 tenant or no security deposit was paid by the tenant, be in the amount

413 of] two months' rent, or (3) two thousand dollars. [, whichever is  
414 greater.] No mortgagee, lienholder or other successor in interest may  
415 require a tenant in possession, as a condition of the receipt of such  
416 money or other valuable consideration, to waive or forfeit any rights or  
417 remedies such tenant may have under law against such mortgagee,  
418 lienholder or successor in interest other than the right to bring an  
419 action to reclaim the security deposit and interest that would be due  
420 such tenant.

421 Sec. 5. Section 49-24 of the general statutes is repealed and the  
422 following is substituted in lieu thereof (*Effective October 1, 2010*):

423 All liens and mortgages affecting real property may, on the written  
424 motion of any party to any suit relating thereto, be foreclosed by a  
425 decree of sale instead of a strict foreclosure at the discretion of the  
426 court before which the foreclosure proceedings are pending or, if the  
427 property affected is real property containing any building or structure  
428 occupied or intended to be occupied by no more than four families, by  
429 a decree of sale in accordance with this section or a decree of market  
430 sale in accordance with section 6 of this act and section 49-26, as  
431 amended by this act.

432 Sec. 6. (NEW) (*Effective October 1, 2010*) (a) Any party to a  
433 foreclosure action may file a motion for a foreclosure by market sale  
434 that shall include such party's proposed plan to market the property.  
435 The court, if it approves the marketing plan, shall grant such motion  
436 and issue a decree setting a deadline, not earlier than one hundred  
437 twenty days after the granting of such motion, for the acceptance of  
438 any offers to purchase the property being foreclosed. A proposed  
439 marketing plan may include listing the property for sale with a person  
440 or persons licensed under chapter 392 of the general statutes and may  
441 list the proposed compensation to be paid to such person or persons.  
442 Such plan shall describe the advertising of the property to be  
443 performed and the proposed cost of such advertising. The moving  
444 party shall notify the court of any offers to purchase the property upon  
445 the party's receipt of such offers.

446 (b) Any offers to purchase made pursuant to this section shall be  
447 subject to approval by the court. After a hearing to review such offers,  
448 the court shall determine whether it is in the best interests of the  
449 parties to the foreclosure action to approve any such offer of purchase.  
450 The court may not reject an offer solely on the basis that the offer  
451 contains contingencies for mortgage financing or a building inspection  
452 or other physical inspections of the property, but in the event of  
453 multiple competing offers, may consider the absence of contingencies  
454 in deciding which, if any, of the offers is in the best interests of the  
455 parties. The court may extend, upon a showing of good cause, the  
456 deadline for the receipt of an offer set in accordance with subsection (a)  
457 of this section. Good cause includes, but is not limited to, allowing  
458 reasonable time to meet any contingencies set forth in an offer.

459 (c) If no offers are received by the deadline date set in accordance  
460 with subsection (a) of this section or no offers received by such date are  
461 approved by the court, the court may either extend the deadline or  
462 issue a decree of sale in accordance with section 49-24 of the general  
463 statutes, as amended by this act, or a decree of strict foreclosure.

464 (d) If the court approves an offer made in accordance with this  
465 section, it shall issue a decree assigning a sale date, not earlier than  
466 sixty days from the date of such decree, by which the sale must occur.  
467 The court may extend such date upon a showing of good cause, as  
468 described in subsection (b) of this section. The court shall determine  
469 and approve the payment of (1) conveyance taxes, (2) encumbrances  
470 that have priority over the interests to be foreclosed, (3) marketing  
471 expenses, including compensation paid to persons licensed under  
472 chapter 392 of the general statutes, (4) recording fees, and (5)  
473 reasonable attorney's fees for the attorney representing the seller at the  
474 closing of the sale to be paid on the closing date.

475 Sec. 7. Section 49-26 of the general statutes is repealed and the  
476 following is substituted in lieu thereof (*Effective October 1, 2010*):

477 When a sale has been made pursuant to a judgment therefor and  
478 ratified by the court, a conveyance of the property sold shall be

479 executed by the person appointed to make the sale or, in the case of a  
480 foreclosure by market sale in accordance with section 6 of this act, a  
481 conveyance of the property sold shall be executed by the mortgagors,  
482 which conveyance shall vest in the purchaser the same estate that  
483 would have vested in the mortgagee or lienholder if the mortgage or  
484 lien had been foreclosed by strict foreclosure, and to this extent such  
485 conveyance shall be valid against all parties to the cause and their  
486 privies, but against no other persons. The court, at the time of or after  
487 ratification of the sale, may order possession of the property sold to be  
488 delivered to the purchaser and may issue an execution of ejectment  
489 after the time for appeal of the ratification of the sale has expired.

490 Sec. 8. Section 49-27 of the general statutes is repealed and the  
491 following is substituted in lieu thereof (*Effective October 1, 2010*):

492 The proceeds of each such sale, less the expenses of marketing and  
493 sale approved pursuant to section 6 of this act, shall be brought into  
494 court, there to be applied if the sale is ratified, in accordance with the  
495 provisions of a supplemental judgment then to be rendered in the  
496 cause, specifying the parties who are entitled to the same and the  
497 amount to which each is entitled. If any part of the debt or obligation  
498 secured by the mortgage or lien foreclosed or by any subsequent  
499 mortgage or lien was not payable at the date of the judgment of  
500 foreclosure, it shall nevertheless be paid as far as may be out of the  
501 proceeds of the sale as if due and payable, with rebate of interest  
502 where the debt was payable without interest, provided, if the plaintiff  
503 is the purchaser at any such sale, he shall be required to bring into  
504 court only so much of the proceeds as exceed the amount due upon his  
505 judgment debt, interest and costs.

506 Sec. 9. (*Effective from passage*) The sum of three hundred thousand  
507 dollars is appropriated to the Labor Department from the State  
508 Banking Fund, for the fiscal year ending June 30, 2010, for the  
509 mortgage crisis job training program established pursuant to section  
510 31-3nn of the general statutes.



This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	49-31l
Sec. 2	<i>from passage</i>	49-31n
Sec. 3	<i>October 1, 2010</i>	47a-20e
Sec. 4	<i>October 1, 2010</i>	47a-20f
Sec. 5	<i>October 1, 2010</i>	49-24
Sec. 6	<i>October 1, 2010</i>	New section
Sec. 7	<i>October 1, 2010</i>	49-26
Sec. 8	<i>October 1, 2010</i>	49-27
Sec. 9	<i>from passage</i>	New section

**Statement of Legislative Commissioners:**

In the fourth sentence of section 6(b), "such offers" was changed to "any such offer" for the purpose of clarity. In the second sentence of section 8, "six" was changed to "6" for conformity with the general statutes.

**BA**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note****State Impact:**

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Judicial Dept.	BF - Cost	3,349,982	1,116,660

Note: BF=Banking Fund

Agency Affected	Fund-Effect	FY 10 \$
Dept. of Labor	BF - Appropriation	300,000

Note: BF=Banking Fund

**Municipal Impact:** None

**Explanation**

The bill extends the sunset date on the Foreclosure Mediation Program from July 1, 2010 to July 1, 2011, and results in the costs indicated in the table above. Since the mediation deadline is 90 days after mediation begins, the cost of the bill would continue for three months into FY 12.

Currently, the program is supported via a Banking Fund appropriation to the Connecticut Housing Finance Authority, which transfers funds to the Judicial Department to employ 50 positions. These positions include 25 Mediation Specialists, 17 Office Clerks and 8 Caseflow Coordinators.

H.B. 5018, An Act Making Adjustments to State Expenditures and Revenues for the Fiscal Year Ending June 30, 2011, which was passed out of the Appropriations Committee on March 25, provided sufficient funding to the Judicial Branch to continue operating the Foreclosure Mediation Program in FY 11.

The bill also appropriates \$300,000 to the Department of Labor

(DOL) in FY 10 for the Mortgage Crisis Job Training Program. Section 501 of PA 09-3 JSS, the budget act, provided carry-forward funding in the amount of \$500,000 for the Mortgage Crisis Job Training Program in FY 10; the bill would result in a total FY 10 funding level of \$800,000 for the program. The Mortgage Crisis Job Training program was established within DOL in FY 09.

***The Out Years***

Since the program is due to sunset in FY 11 under the bill, there is no out year impact.

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**OLR Bill Analysis****sHB 5270*****AN ACT CONCERNING FORECLOSURE MEDIATION.*****SUMMARY:**

This bill extends the foreclosure mediation program established under PA 08-176 until July 1, 2011. Under current law, the program will terminate on July 1, 2010.

The bill makes several modifications to the foreclosure mediation program. It requires parties to a foreclosure mediation to mediate in good faith, and allows a court to impose sanctions for failure to do so. It creates additional documentation and contact information requirements for mortgagees or their counsel, and further modifies the program regarding motions for a continuance or extension and withdrawal of settled actions.

The bill codifies into Connecticut law certain provisions of the federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22, Title VII). The federal law has a sunset date of December 31, 2012. The bill extends the length of time certain tenants have to vacate following the foreclosure of the homes they occupy, establishing that tenants must be given at least 90 days notice before eviction.

The bill modifies the “cash for keys” provisions regarding the minimum amount that mortgagees or other successors in interest may offer to tenants to vacate a foreclosed residential property, establishing that the amount must at least \$2,000 regardless of whether there is evidence of the amount of the tenant’s security deposit.

The bill allows for “foreclosure by market sale” for one-to-four-family residential properties, adding to the two current types of

foreclosure, which are strict foreclosure and foreclosure by (judicial) sale. The bill specifies the marketing plan required for a foreclosure-by-market sale and the required judicial approval of the sale and payment of sale proceeds, as well as various deadlines and other provisions.

The bill appropriates \$300,000 to the Labor Department from the State Banking Fund for the mortgage crisis job training program for FY 10.

EFFECTIVE DATE: October 1, 2010, except for the sections concerning the foreclosure mediation program and appropriating funds to the Labor Department, which are effective upon passage.

## **FORECLOSURE MEDIATION PROGRAM**

### **§ 2 – Good Faith Requirement; Sanctions**

The bill requires each mediating party to make a good faith effort to mediate all issues arising out of the action. Good-faith effort is defined to include:

1. procuring documents that show compliance with governmental loan modification programs;
2. providing written reasons for denying a loan modification application;
3. disclosing the inputs for formulas used to determine whether to modify the mortgage;
4. documenting any restrictions that prevent modification; and
5. demonstrating reasonable efforts by the mortgagee or its agent to obtain a waiver of those restrictions.

The bill authorizes the court to sanction a party or a party's attorney for failing to attend a mediation session or failing to make a good-faith effort to mediate, unless the court finds reasonable cause for the failures. Allowable sanctions include (1) dismissal of the action, (2)

tolling interest accrual on the mortgage, and (3) forbidding the mortgagee from charging its attorney's fees to the mortgagor.

### **§ 2 – Mortgagee Documentation and Contact Information**

The bill requires a mortgagee or mortgagee's counsel to bring to a mediation session:

1. a certified copy of the original note and mortgage;
2. documentation of each negotiation and assignment of the note and mortgage;
3. a record of payments on the mortgage;
4. an itemization of all fees and costs, including attorney's fees, that must be paid to reinstate the mortgage or satisfy the mortgage in full;
5. an itemization of any overdue payments causing the mortgage to be in default;
6. any agreement with an investor or other party that affects mediation, including a pooling and servicing agreement; and
7. any other documentation the court requires.

The bill provides that mortgagees or their counsel must provide the mortgagor with contact information, including address and telephone number, for any person with authority to agree to a proposed settlement. Such people include the mortgagee, the mortgagee's agent, and the mortgage servicer. The mortgagee, counsel, or agent must verify the receipt of any information that the mortgagor requests.

The bill provides that if the mortgagee is represented by counsel at the mediation session, the mortgagee must be available to participate in the session by telephone. Current law permits the mortgagee to be absent if available by telephone or other electronic means.

### **§ 2 – Motion for Continuance or Extension**

The bill provides that if a party is not ready to mediate by the deadline for the first mediation session, it must file with the foreclosure caseflow coordinator a motion for continuance, a motion for extension of the mediation period, or both. The court must not award attorney's fees to the mortgagee for any mediation session in which the mortgagee is not ready to mediate.

### **§ 2 – *Withdrawal of Settled Actions***

The bill requires a foreclosure action that has been settled to be withdrawn within 120 days of the settlement date. If the action is not withdrawn within that time, the court must either dismiss it or extend the time for withdrawal for good cause shown.

## **TENANTS OF FORECLOSED HOMES**

### **§ 3 – *Time to Vacate***

The bill increases the time certain tenants who have leased a property in an arms-length transaction may continue residing there once it is in foreclosure. These provisions apply to any tenant who is someone other than the mortgagor or his or her child, spouse, or parent. Under current law, these protections apply to tenants who are not the mortgagor or owner of the property.

The bill provides that when a mortgage or lien of residential real property is foreclosed, the foreclosing party or other successor in interest assumes the property subject to certain rights of any tenants who satisfy the above criteria and who are in possession of the property when absolute title vests in the mortgagee or other successor in interest.

The bill stays the tenant's ejection after foreclosure and prohibits starting an eviction against the tenants until the later of (1) the lease expiration date, if the lease was entered into before absolute title vests in the foreclosing party or other successor in interest, or (2) 90 days after absolute title vests in the foreclosing party or other successor in interest. In either case, the foreclosing party or other successor in interest must provide a notice to vacate to any such tenant at least 90

days before the eviction date. Under current law, the length of the stay and eviction prohibition ranges from 30 to 60 days after the foreclosing party or successor in interest obtains absolute title, and depends not only on when the tenant entered the lease, but on whether the lease was written or oral.

The bill provides that the tenants whose leases have expired cannot be evicted prior to the time outlined above. It also states that its provisions do not reduce the tenants' rights against dispossession under any other law, including those related to certain tenants who are (1) 62 years of age or older or who live with certain family members who are 62 years of age or older, (2) blind, or (3) physically disabled, and certain other tenants in common interest communities.

#### **§ 4 – Cash for Keys**

Under the bill, the minimum incentive that a mortgagee or other successor in interest may offer a tenant to vacate a foreclosed residential property must equal the greater of (1) double the security deposit and interest that would be due the tenant under the law upon the termination of the tenancy, (2) two months' rent, or (3) \$2,000.

Under current law, the minimum incentive varies depending on whether there is evidence of the amount of the tenant's security deposit. If there is evidence, option (1) above applies. If there is no such evidence or if the tenant did not pay a security deposit, options (2) and (3) apply.

### **FORECLOSURE BY MARKET SALE**

#### ***Current law***

Under current law, there are two types of foreclosure in Connecticut: strict foreclosure and foreclosure by sale. Under strict foreclosure, the court gives the foreclosing party title to the property. In foreclosure by sale, the court orders an auction sale of the foreclosed property. If the home sells for an amount greater than the debt owed the foreclosing party, the expenses of the sale, fees, and other debts secured by the property, then the debtor receives the excess.



**§§ 5, 6 – Motion for Foreclosure by Market Sale; Marketing Plan**

The bill allows parties to a foreclosure action involving a one-to-four-family residential property to file a motion for a foreclosure by market sale. The motion must include the party's proposal to market the property. The party may propose to list the property for sale with one or more licensed real estate brokers or salespersons, and may propose their compensation. The marketing plan must describe the advertising of the property and proposed cost of the advertising.

The court must grant the motion if it approves the marketing plan, and must set a deadline for accepting offers to purchase the property. The deadline must be at least 120 after the order granting the motion.

**§ 6 – Offers to Purchase the Property; Court Approval**

The bill provides that the party seeking foreclosure by market sale must notify the court, upon receipt, of any offers to purchase the property. Any such offers are subject to the court's approval. After a hearing, the court must determine whether it is in the best interests of the parties to the foreclosure action to approve any such offers.

If the court approves an offer for a market sale of the property, the court must issue a decree assigning a sale date at least 60 days from the date of the decree. The court must determine and approve the payment of (1) conveyance taxes; (2) encumbrances that have priority over the interests being foreclosed; (3) marketing expenses, including compensation for licensed real estate brokers or salespersons; (4) recording fees; and (5) reasonable attorney's fees for the attorney representing the seller at the closing to be paid at closing.

The court may not reject an offer solely because it contains contingencies for mortgage financing or an inspection. However, if there are multiple competing offers, the court may consider the absence of contingencies in deciding whether any of the offers are in the parties' best interests. If no offers are received by the deadline or the court does not approve any timely offer, the court may extend the deadline, or order a foreclosure by sale or a strict foreclosure.

Upon a showing of good cause, including allowing reasonable time to meet any contingencies set forth in an offer, the court may extend the deadline for receiving offers and for the sale date.

### **§ 7 – Conveyance and Title**

The bill provides that when there has been a foreclosure by market sale, the mortgagors must execute a conveyance of the property, vesting in the buyers the same estate that would have vested in the mortgagee or lienholder if the mortgage or lien had been foreclosed by strict foreclosure. The conveyance is valid against all parties and others with a legal interest of mutual and successive relationship to the property. When the sale is ratified or afterwards, the court may order possession to be delivered to the purchaser and may issue an execution of ejectment after the time to appeal the ratification has expired.

### **§ 8 – Sale Proceeds**

The bill applies the proceeds of a foreclosure by market sale, less the marketing and sale expenses approved by the court, in the same manner as the proceeds of a foreclosure by sale. If the sale is ratified, the court will determine the parties who are entitled to the proceeds and the amount to which they are entitled. If any part of the debt secured by the mortgage or by any subsequent mortgage was not payable at the date of the foreclosure judgment, it still must be paid as far as possible from the sale proceeds as if it were payable, with any interest rebated where the debt was payable without interest. If the party bringing the foreclosure action is the purchaser, that party must bring to court only as much of the proceeds as exceed the amount due upon that party's debt, interest, and costs.

## **BACKGROUND**

### ***Related Bill***

SB 225, reported favorably by the Judiciary Committee, requires mortgagees in certain foreclosure actions to notify the mortgagor of the contact information for an individual authorized to negotiate on behalf of the mortgagee. The bill also authorizes a court to delay or deny the entry of a judgment of strict foreclosure, foreclosure by sale, or a

deficiency judgment due to certain actions by the mortgagee.

sHB 5369 (File 152), reported favorably by the Housing Committee, extends the sunset date for the foreclosure mediation program to July 1, 2012. The bill also requires parties in the program to mediate in good faith, and requires mortgagees to provide certain documents and contact information.

### **COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute

Yea 17      Nay 1      (03/16/2010)